IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1203 OF 2006
IN
SUMMARY SUIT NO.3406 OF 1999

ICICI Limited (Debenture Trustees)
(formerly known as The Industrial Credit
and Investment Corporation of India Ltd.,
ICICI Toweers, Bandra-Kurla Complex
Bandra (E), Mumbai-400 051. ...Plaintiffs

Vs.

1. Hico Products Ltd.
   Pt. Satavalekar Marg, Mahim
   Mumbai-400 016.
2. Ind Banki Merchant Banking Service Ltd.,
   Maker Tower F, 17th Floor,
   Cuffe Parade, Mumbai-5.
3. Bank of India
   Express Towers, Nariman Point
   Mumbai-400 021.
4. Union Bank of India
   Union Bank Bhavan
   239 Backbay Reclamation
   Mumbai-400 021.
5. State Bank of India
   New Administrative Building
   Madam Cama Road
   Nariman Point, Mumbai-21. ...Defendant

Ms. Pooja Sood i/b.ManilalKher Ambalal & Co. for Plaintiffs
Mrs. Vandana Tiwari i/b. FZB & Asso for Defendant Nos.3 to 5
Mr.Gautam Ankhade i/b. Ashwin Ankhad & Associates for

Respondent No.4- Radium Creations
Mr.Shrihari Ange with Mr. D.Y. Chitnis, S.S. Chiparikar
i/b. M/s. Deepak Chitnis Chiparikar & Co. for Defendant No.1
Mr. Navroz Seervai with Ms. Preeti Shah
i/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for Respondent Nos.1,3,5 & 6
Mr. Pesi Modi i/b. M/s I.C. Legal for M/s. Saujanya Enterprises
Mr. D.V. Deokar 1st Asstt. To Court Receiver present

CORAM: SMT. ROSHAN DALVI, J.
DATED : 29TH JANUARY, 2007.

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. This Chamber Summons is taken out by the Defendant No.1 for setting aside the order confirming the sale of the immovable property in Lot No.9 situated at Plot No.C-30 to C-36 Paware Village, Thane, Belapur Road, New Bombay, for accepting the offer of one M/s. Nensee Construction Pvt. Limited for a specified sum, for taking over possession from the auction purchaser and for conducting fresh auction.

2. The Court Receiver came to be appointed in this Suit. The Court Receiver was directed to sell several properties of the first Defendants. These properties were under various lots. This Chamber Summons is concerned under Lot No.9. This auction was held on 5th April, 2005. The Court Receiver made a report to the Court in that behalf on 11th July, 2005. An order came to be passed on the Court Receiver's report

confirming the sale in favour of Respondent No.1 on 5th September, 2005. It is that order confirming the sale that is challenged.

3. The paragraph 13 of Court Receiver's report dated 11th July, 2005 with regard to Lot No.9 shows that 7 offers were received for purchase of the aforesaid property. The highest offer was that of Mr. A.R. Shah at 9.45 Crores, which was accepted by the Court Receiver. However, that offerer failed to deposit the balance amount required to be initially deposited, despite extension of time granted by the Court. After the date of the bid an offer of the first Respondent of Rs.9.75 Crores was received. Thereafter one more offer was brought in by the Plaintiffs which was for Rs.10.51 Crores.

4. The impugned order inter alia considered these offers on 5th September, 2005. The bidders were present in Court on that date. They increased their offers and there was open bidding in Court. The first Respondent gave the highest offer of 14.15 Crores, he was directed to deposit 25% of the offer price within 14 days and the balance amount within 30 days of the order. The Respondent was directed to execute the conveyance in his favour upon deposit of the full price. His initial deposit made to the Court Receiver at the time of the auction of Rs.5 Lakhs was allowed to be adjusted from the

final bid.

5. The properties of which the Court Receiver came to be appointed consequently came to be sold by the public auction and thereafter bids were taken in open Court as aforesaid.

6. The first Respondent did not deposit the entire amount with the Court Receiver as directed. He was unconditionally granted an extension of time initially. Thereafter he further applied for time and was granted time upon payment of interest at the rate of 12% per annum on the amount of the bid not paid by him. He made payment of the entire amount by 18th November, 2005. Thereafter the Court Receiver was directed to execute the conveyance in his favour or in favour of his nominee by the order dated 25th January, 2006. He nominated 5 parties for the ultimate conveyance. 4 of these parties have been made Respondents. One other party M/s. Saujanya Enterprises represented by Mr. Modi has not been formerly made Respondent but the Counsel on behalf of the Defendant No.1 concedes that he would be made party Respondent to this Chamber Summons. Since the land is leasehold, the Court Receiver entered into Deeds of Assignment with all the 4 Nominees who were Respondents 3 to 6 to the Chamber Summons as well as with M/s

Saujanya Enterprises on 13th June, 2006, 14th August, 2006, 13th June, 2006, 19th September, 2006 and 28th September, 2006.

7. It is the contention of the Defendant No.1 that after the appointment of the Court Receiver, due to inadvertence, Defendant No.1 failed to execute the Agency Agreement which is why the Court receiver took physical possession of inter alia the properties under Lot No.9. The Defendant No.1 did not appear to show cause against the Plaintiffs' Notice of Motion for taking forcible possession of these properties and hence, the Court Receiver took forcible possession thereof. It is their contention that because their factory was closed and they had certain labour problems with their employees, the properties came to be sealed by the Court Receiver and that because they had to defend certain criminal proceedings they lost interest in attending these Civil Suits.

8. It is the contention of Defendant No.1 that in a letter written by the MIDC to their Advocates, MIDC showed an average rate of the quotations received in April, 2006 upon the tender to be Rs.6100 per Meter of land. No instances showing any assignment at that rate is produced by the first Defendant. The Defendants have produced a letter of one Nansee Construction Private Limited showing that they were

interested in purchasing this property for Rs.22 Crores. The said party has not approached the Court or the Court Receiver. The first Respondents have produced the ready-reckoner issued by the MIDC for the MIDC lands from the year 2001 to 2007. The rates per square meter of industrial land shown in their ready reckoner for the year 2001 in the Zone where this property is situated is Rs.2100/- that has increased to Rs.2500/- in 2005, and to Rs.3000/- in the year 2006-2007. The first Respondent purchased the property at the rate of Rs.3200/- in 2005 which is higher than the rate shown in the ready-reckoner.

9. Of course in the last year after the confirmation of the sale in favour of the first Respondent and the execution of the date of assignment in favour of Respondents 3 to 6 and Saujanya Enterprises the prices have still further risen. That is not the reason to set aside a sale which has been completed as per procedure in the prior year.

10. My attention has been drawn to the Judgment of the Supreme Court in the case of Janak Raj Vs. Gurdial Singh AIR 1967 S.C.608 in which it has been held that the sale which has been confirmed by the Court cannot be set aside even after the decree obtained in the Suit is reversed. The title of the purchasers relates back to the sale and not the

confirmation. The object of this provision is to repose confidence in the auction procedure of Court Sales. They therefore, cannot be set aside easily. Similarly it is further held that such sale cannot be set aside, unless manifest illegality is shown in the order and which can be done only in appeal therefrom.

11. The aforesaid Judgment is shown to have been followed in the case of Sardar Govindrao Mahadik Vs. Devi Sahai AIR 1982 SC 989 in which it has been held that the sale certificate of a confirmed auction sale would protect the auction purchaser even if the decree, in execution of which the auction sale has been held, is set aside. This is to protect the equity in favour of the stranger against the default on the part of the Judgment Debtor in not obtaining the stay of the execution of the decree during the pendency of the Appeal.

12. In this case the Defendant No.1 has not even contested the Suit over the application for appointment of the Court Receiver and the taking over of the possession of inter alia these properties.

13. In this Suit, upon a Court Receiver's report, an order was passed on 20th October, 2006 in which the offer under

Lot No.13, which was below the reserve bid, was set aside and directions were passed for a fresh valuation. For that property the reserved price was fixed on 14th November, 2002 and the auction sale was conducted on 13th September, 2006. Hence, considering the 4 years delay in conducting the auction sale itself, the Court Receiver was directed to obtain a fresh valuation. The procedure adopted by the Court Receiver for Lot No.9 which concernes these properties is not the same. The Court Receiver has not delayed the auction sale in this case, after the fixation of the reserve price. There is absolutely no case is made out for grant of any reliefs in this Chamber Summons pursuant to the validly conducted sale and the consequent transfer of properties under the sale.

14. The Chamber Summons is dismissed with costs fixed at Rs.5000/- .

(SMT. ROSHAN DALVI, J.)